2411.

SUPREME COURT OF THE UNITED STATES.

No. 135.

THE UNITED STATES, Pl'ff,

vs.

LINDSEY NICKERSON, Jr.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MASSACHUSETTS.

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THE UNITED STATES OF AMERICA,
Massachusetts District, ss:

At a Circuit Court of the United States, begun and holden at Boston, for the First Circuit and District of Massachusetts, on Monday, the fifteenth day of May, in the year of our Lord one thousand eight hundred and fifty-four—

Before the Honorable

BENJAMIN R. CURTIS,
Associate Justice.

PELEG SPRAGUE,
District Judge.

The jurors of the United States within and for said District, on their oath present—

That on the tenth day of January, in the year of our Lord one thousand eight hundred and fifty-four, one Lindsey Nickerson, Junior, of that name, of Harwich, in the Collection District of Barnstable, in said district of Massachusetts, trader, at said Barnstable, in said district, wishing and intending to procure the expenditure of public money of the United States of America, and representing himself to be the lawful agent for the schooner Silver Spring, which said schooner was then and there a vessel belonging to and owned in said Collection District of Barnstable, and was then and there duly enrolled and licensed as a vessel above twenty tons burden, to carry on the cod-fishery for one year from and after the fifteenth day of April, eighteen hundred and fifty-three, during the fishery season for that year, and claiming, as such lawful agent of the owners of said fishing vessel, called the Silver Spring, to be then and there entitled to be paid by the Collector of said District where the said vessel then and there belonged, out of the public money of the said United States, the allowance which is authorized to be paid according to law, to certain fishing vessels, under and by virtue of an act of Congress of the United States of America, approved July twenty-ninth, eighteen hundred and thirteen, and re-enacted by the said Congress February ninth, eighteen hundred and sixteen, entitled "An Act laying a duty on imported salt, granting a bounty on pickled fish exported, and allowances to certain vessel employed in the fisheries," to wit: the allowance of two hundred and sixty-eight dollars and twenty-five cents, according to the alleged tonnage and burden of said vessel; did then and there come in his own proper person before Sylvanus B. Phinney, who was then and there the Collector of the said district of Barnstable, duly authorized, directed and empowered to receive the claims of owners or agents of fishing vessels belonging

to said district, and to pay the aforesaid allowance upon proper and lawful evidence and vouchers being presented by the claimant, and affirmed by oath; and did then and there apply to, for, and claim of the said Collector of said district, an allowance as aforesaid, for and on account of the employment of the said fishing vessel in the cod-fishery, the fishing season then last past, he, the said Lindsey Nickerson, Junior, then and there contriving and intending, by means of such application to the said Collector, and by means of the vouchers, papers, and evidence then and there submitted by him to the said Collector, and of a certain oath he, the said Nickerson, was then and there required to take and subscribe before the said Collector, to procure and bring about the expenditure of public money of the United States aforesaid, and the payment of the sum of two hundred and sixty-eight dollars and twenty-five cents, being the amount allowed, and to be paid by the said United States, through the said Collector, therefor authorized and empowered, to a fishing vessel of said District of Barnstable, of the burden and tonnage of the said Silver Spring, as then and there represented by the said Nickerson; provided such fishing vessel should have been duly qualified for carrying on the cod-fisheries, and should have been actually employed therein according to law, and the owners or agent thereof should furnish to said Collector the evidence required to entitle the owner or agent of such vessel to receive said allowance, as he, the said Nickerson, then and there well knew and understood, and that it being then and there material that the said Nickerson, as such agent aforesaid, should produce to the said Collector for the regular journal or log-book, day by day, on board the said fishing vessel Silver Spring, while at sea, duly verified by the oath or affirmation of the master or skipper of said vessel, and should also produce to the said Collector the original agreement made between the owner or owners, the master and fishermen of said vessel, and should also prove to the satisfaction of the said Collector, that the officers, and at least three-fourths of the crew of said vessel, while so employed in the cod-fishery as aforesaid, were citizens of the said United States, or persons not the subjects of any foreign prince or state, he, the said Collector of said district, in pursuance of the regulations and requirements of the department of the Treasury of the said United States, required and directed the said Nickerson then and there to make oath and depose, in writing, in regard to the time the said vessel was employed at sea, in the bank and other cod-fisheries during the then last fishing season, and also in regard to the paper produced by the said Nickerson, as and for the original agreement with the fishermen employed on board said vessel, and also in regard to the citizenship of three-fourths of the crew employed in said vessel during the then last fishing season, of all of which it was then and there material that the said Collector should be truly informed, and which oath aforesaid, he, the said Nickerson, was then and there required, as aforesaid, to make before the said Collector, duly authorized and

empowered, in said district of Barnstable, to administer said oath in said district, in his said office of Collector of the Customs in said district of Barnstable, and having a competent power and authority in his said official capacity, and in the performance of his official duty as said Collector, to administer an oath in the premises to the said Nickerson.

And the jurors aforesaid, on their oath aforesaid, do further say, that the said Nickerson, intending to defraud the United States of America, did, on the tenth day of January, in the year of our Lord one thousand eight hundred and fifty-four, in his own proper person, go before the said Sylvanus B. Phinney, Collector as aforesaid; at Barnstable, in the District of Massachusetts aforesaid, he, the said Phinney, having then and there competent power and authority as aforesaid, to administer an oath to the said Nickerson in that behalf, and the said Nickerson was then and there in due manner sworn by the said Phinney, and took and subscribed his oath before the said Phinney, in due form of law, so prescribed and required as aforesaid in that behalf, in order to obtain the allowance aforesaid, to be expended and paid out of the public money of the said United States, as aforesaid; and did then and there falsely and corruptly say, depose, swear, and make affidavit in writing, amongst other things in substance and to the effect following, that is to say: That the paper then and there produced by the said Nickerson, and purporting to be a printed and written agreement, between the owners, master, and fishermen of the said schooner Silver Spring, employed in the cod fishery, the fishing season then last past, was the original agreement made between the owners, master, and fishermen, for and during the then last fishing season, as aforesaid; and that three-fourths of the crew employed in said schooner, during the said then last fishing season, were citizens of the said United States, or persons not subject to any foreign prince or state; it being then and there material, in order to obtain said allowance and expenditure of public money, for the employment of said fishing vessel, as aforesaid, that the owner of said fishing vessel called the Silver Spring, or his agent or representative, should, previous to receiving said allowance and the expenditure of public money as aforesaid, swear as aforesaid to the truth of the aforesaid declarations, touching the expenditure of public money as aforesaid. Whereas, in truth and in fact, the said paper so produced and sworn by the said Nickerson, was not the original agreement between the owners and masters of the said schooner and the fishermen employed on board said vessel during the said fishing season then last past, and when also in truth and in fact, three-fourths of the crew of said vessel so employed, as aforesaid, were not citizens of the said United States, and were not persons not the subjects of any foreign prince or state, but were, to wit, five at least of said crew, subjects of a foreign prince or state, to wit, of Victoria, Queen of Great Britain and Ireland, the whole number of the said crew so employed on board said fishing vessel, during said fishing season,

consisting at no one time while she was employed, of more than nine persons including the officers thereof; of all of which he, the said Nickerson, was then and there informed and well knew.

And the jurors aforesaid, on their oath aforesaid, do say, that the said Lindsey Nickerson, Junior, by means of the false oath aforesaid, then and there procured and brought about the expenditure of public money of the United States of America, and then and there procured the payment to himself, out of public money of the said United States, of the sum of two hundred and sixty-eight dollars and twenty-five cents.

And so the jurors aforesaid, on their oath aforesaid, do say that the said Lindsey Nickerson, Junior, on the said tenth day of January, in the year of our Lord one thousand eight hundred and fifty-four, at Barnstable, in the District of Massachusetts aforesaid, and within the district of which the said Phinney was Collector, as aforesaid, and before the said Phinney, Collector as aforesaid (he, the said Phinney, then and there having competent power and authority to administer the aforesaid oath in that behalf), by his own act and consent, in manner and form aforesaid, falsely did swear touching the expenditure of public money of the said United States of America, as aforesaid.

2*d*. And the jurors aforesaid, on their oath aforesaid, do further present that on the tenth day of January, in the year of our Lord one thousand eight hundred and fifty-four, at Barnstable, in said district, one Lindsey Nickerson, Junior, of that name, who was then and there the agent of the owner or owners of a certain fishing vessel belonging to the collection district of said Barnstable, called the schooner Silver Spring, did then and there, in his own proper person, come before Sylvanus B. Phinney, who was then and there the Collector of said district, and who was duly authorized and required to administer an oath to the said Nickerson, in order to ascertain and satisfy himself whether the said Nickerson was entitled to receive the allowance granted by law to certain fishing vessels. And did then and there take and subscribe before the said Phinney, his oath, in order to obtain the said allowance; and did then and there, in substance, falsely swear that a certain shipping paper, produced by him to said Collector, was the original agreement made between the owners, master, and fishermen of the said schooner Silver Spring, during the then last fishing season, and also, that two-thirds of the crew of said fishing vessel so employed, were citizens of the United States, or were persons not subject to any foreign prince or state, it being material and required, in order to obtain the said allowance, that he, the said Nickerson, should then and there take said oath; he, the said Nickerson, then and there intending and contriving to defraud the United States aforesaid, and to procure and bring about the expenditure of public money of the United States, by means of said false and corrupt oath, he, the said Nickerson, then and there, well knowing and being informed that the said paper was not the original agreement with six of the fishermen who were employed on

board of said vessel the then last past season, on wages, and not on shares; and also, that two-thirds of the crew were not citizens of the United States, but were citizens of the foreign state, or kingdom of Great Britain and Ireland. And so the jurors aforesaid, on their oath aforesaid, do say that the said Lindsey Nickerson, Junior, on the day and year aforesaid, and in manner and form aforesaid, before the said S. B. Phinney, Collector aforesaid, falsely and corruptly did swear, and did then and there commit the crime of perjury.

And the jurors aforesaid, on their oath aforesaid, do further present that the said Lindsey Nickerson, Junior, was first apprehended in said District of Massachusetts, after committing the aforesaid offence

Against the peace and dignity of the said United States, and contrary to the form of the statute in such case made and provided.

This indictment was presented and entered at the May term of this Court, in the year of our Lord eighteen hundred and fifty-four, and was thence continued to the present term. And now, to wit: on the seventh day of November, A. D. 1854, the said defendant is set to the bar, and has this indictment read to him, and thereof he says he is not guilty, and further files the following special plea, to wit:—

UNITED STATES OF AMERICA:

CIRCUIT COURT OF THE UNITED STATES,
Within and for the First Circuit and the District of Massachusetts:

UNITED STATES
vs.
LINDSEY NICKERSON, JR.

And the said Lindsey Nickerson, Junior, comes into Court, and having heard the said indictment read, protesting that he is not guilty of the premises charged in the said indictment, demands judgment of the said indictment, and of all and every part thereof, he having heretofore, by a jury of the country, in due form of law, been acquitted and discharged of the premises in the said indictment above specified and charged on him; and for plea to the said indictment, says, that the said United States ought not further to prosecute him by reason of the premises in the said indictment mentioned; because he says, that heretofore, to wit: at the District Court of the United States begun and holden at Boston, within and for the District of Massachusetts, on the third Tuesday (being the twenty-first day) of March, in the year of our Lord one thousand eight hundred and fifty-four, the jurors of the United States within and for the said District on their oath presented, "That on the tenth day of January, in the year of our Lord one thousand eight hundred and fifty-four, in the county and collection district of Barnstable aforesaid, within the district of Massachusetts aforesaid, one Lindsey Nickerson, Junior, of that name, of Harwich, in said district, trader, who was then and

there a part owner and lawful agent for the schooner Silver Spring, which said schooner was then and there a vessel duly enrolled, and also duly licensed as a vessel above twenty tons (she being then and there a vessel of sixty-seven tons and sixty-one ninety-fifths of a ton, according to her measurement), to carry on the cod-fishery for one year from and after the fifteenth day of April, eighteen hundred and fifty-three, during the fishing season of that year, and for which said fishing vessel the allowance was claimed by the said Nickerson, which is authorized to be paid according to law, to certain fishing vessels under and by virtue of an Act of Congress of the United States of America, approved July twenty-ninth, eighteen hundred and thirteen, entitled An act laying a duty on imported salt, granting a bounty on pickled fish exported, and allowances to certain vessels employed in the fisheries, and also the act of February ninth, 1816, chap. 14. And in order to obtain the said allowance in money, for and on account of the employment of said vessel in the cod-fishery, which is provided by law to be paid as aforesaid, he, the said Lindsey Nickerson, Junior, of that name, did come in his own proper person on said fifth day of January, in said district of Barnstable aforesaid, and did then and there produce a certain printed and written paper, purporting to be a fisherman's shipping paper, before and to one S. B. Phinney, who was then and there collector of the said district of Barnstable, to which district said schooner belonged, which said shipping paper so produced by the said Lindsey Nickerson, Junior, purported to be an agreement between Snow and Nickerson, owners of the said schooner Silver Spring, and one Hezekiah Taylor, master of said schooner, and the fishermen whose names purported to be thereto subscribed, and also purporting to be an agreement in writing and print, with every fisherman who had been employed on board said schooner during the fishing season, for the year eighteen hundred and fifty-three, and purporting to express that the fish and the proceeds of such fish as might be caught on board said vessel, should be divided among the said fishermen according to the provisions by law required to be made in such agreement, before proceeding on a fishing voyage, by the Master of such fishing vessel, with every fisherman who may be employed therein, in order to entitle such fishing vessel to the allowance aforesaid; and he, the said Lindsey Nickerson, Junior, was then and there sworn, and took and subscribed in his own proper hand, his corporal oath, before the said S. B. Phinney, collector as aforesaid, in due form of law to the declarations then and there in part written and in part printed, and a paper purporting to be a certain 'certificate to obtain the allowance to vessels of twenty tons and upwards, employed in the bank and other cod fisheries,' among other things, in the following words, to wit: 'I, Lindsey Nickerson, Jr., lawful agent for the schooner Silver Spring, do solemnly swear, that the paper now produced by me (which paper so referred to in said oath was the same) (to wit: the aforesaid paper purporting to be a fisherman's agreement) is the

original agreement made between the owners, master, and fishermen. I further swear, that three-fourths of the crew employed in said schooner, during the said last fishing season, are citizens of the United States, or persons not subject to any foreign prince or state,' he, the said S. B. Phinney, then and there having sufficient and competent power and authority to administer the said oath to the said Nickerson, Junior, in that behalf, which said oath so taken by the said Nickerson, Jr., was required to be taken by the owner or agent of said fishing vessel, under and by virtue of an Act of Congress of the United States of America, approved July twenty-ninth, eighteen hundred and thirteen, and re-enacted February ninth, eighteen hundred and sixteen, and in a matter and proceeding then and there required by law, in order to obtain the allowance aforesaid for said fishing vessel, it being then and there material and required by the act aforesaid, and by force of the statutes of the said United States therein provided, in order to obtain said allowance of money, that the owner of said fishing vessel, or his agent or representative, previous to receiving such allowance, should swear as aforesaid, to the truth of the aforesaid declarations.

"And the jurors aforesaid, on their oath aforesaid, did further present that the said Lindsey Nickerson, Junior, did then and there upon his oath aforesaid, and in his oath aforesaid, which oath was so required as aforesaid, make certain false declarations to the effect following, among other things: That is to say, that the said paper purporting to be a fisherman's paper, so produced and sworn to by him, was the original agreement made with the fishermen employed on board said vessel during the fishing season then last past; and that three-fourths of the crew employed in said fishing schooner, during the fishing season then last past, were citizens of the United States of America, or were not subject to any foreign prince or state, when, in truth and in fact, three-fourths of the said crew were not citizens of the United States, but were subject to a foreign prince or state, to wit: to Queen Victoria, Queen of Great Britain and Ireland, and when also in fact the said paper, purporting to be the original agreement made with the fishermen employed on board said vessel during said fishing season, was not the original agreement required by law as aforesaid to be made and sworn to. And he, the said Nickerson, then and there well knowing that a portion of said fishing crew, to wit: five thereof, were employed on wages only, and not on shares; and he, the said Nickerson, Junior, also knowing that a portion of said crew, to wit: two-thirds thereof, or more than half thereof, were not citizens of the United States, but were subject to some foreign prince or state.

"And so the jurors aforesaid, on their oath aforesaid, did say then and there, on the day and year aforesaid, before the said S. B. Phinney, Collector as aforesaid, having competent power and authority then and there to administer said oath to the said Nickerson, Jr., as aforesaid, he, the said Lindsay Nickerson, Junior, upon taking

the said oath as aforesaid required as aforesaid to be taken by force of law for the purpose aforesaid, knowingly and willingly did swear to and make the aforesaid false declarations in said oath in manner and form aforesaid, and did then and there, by so making the said false declarations, or either of the said false declarations in said oath contained, commit wilful and corrupt perjury.

"And the jurors aforesaid, on their oath aforesaid, did further present that said Lindsey Nickerson, Jr., was first apprehended in said District of Massachusetts after committing the aforesaid offence

"Against the peace and dignity of the said United States, and contrary to the form of the statute in such case made and provided."

And afterwards, to wit: at the said District Court of the United States, begun and holden at Boston, within and for the District of Massachusetts, on the said third Tuesday (being the twenty-first day) of March, in the year of our Lord one thousand eight hundred and fifty-four, the said Lindsey Nickerson, Jr., was set to the bar and had the said indictment read to him, and he said that thereof he was not guilty, and thereof for trial he put himself upon the country. A jury wast hereupon empanelled and sworn to try the issue, who, after hearing all matters and things concerning the same, returned their verdict therein, and upon oath said that the said Lindsey Nickerson, Junior, was not guilty. And it was thereupon considered by the said last-mentioned Court that the said Lindsey Nickerson, Junior, be discharged and go thereof without day. As by the record thereof more fully and at large appears, which judgment still remains in full force and effect, and not in the least reversed or made void. And the said Lindsey Nickerson, Junior, in fact, saith that he, the said Lindsey Nickerson, Junior, and the said Lindsey Nickerson, Junior, so indicted and acquitted as last aforesaid, are one and the same person, and not other and different persons; and that the said perjury of which he, the said Lindsey Nickerson, Junior, was so indicted and acquitted as aforesaid, and the perjury of which he is now indicted, are one and the same perjury, and not other and different perjuries. And this he, the said Lindsey Nickerson, Junior, is ready to verify; wherefore he prays judgment, and that by the Court here he may be dismissed and discharged from the said premises in the present indictment specified. And as to the felony aforesaid in the said indictment mentioned, the said Lindsey Nickerson, Junior, saith that he is not guilty thereof, and therefore he puts himself upon the country. LINDSEY NICKERSON, JR.

To which the following demurrer was on the same day filed:—

CIRCUIT COURT FOR MASSACHUSETTS DISTRICT:

U. STATES, by Indictment,
vs.
LINDSEY NICKERSON, JR. } October term, 1854.

And B. F. Hallett, attorney of the United States for said District,

who prosecutes for the said United States in this behalf, comes and says, that for and notwithstanding anything in the said plea of former acquittal of the said Nickerson, Jr., by him above pleaded, the United States ought further to prosecute him, the said Nickerson, Jr., by reason of the premises in the said indictment to which the said plea is above pleaded, mentioned; because he says that the said plea and the matters therein contained, are not sufficient in law to bar the said United States from further prosecuting him, the said Nickerson, Junior, by reason of the premises, and for the perjury set forth in the said indictment to which the said plea is above pleaded, mentioned, and this the said B. F. Hallett, attorney for the United States aforesaid, is ready to verify.

Wherefore he prays judgment, that the said United States may further prosecute him, the said Nickerson, Junior, by reason of the premises in the said indictment to which the said plea is above pleaded, mentioned, and that the said Nickerson, Junior, may answer to the same indictment.

B. F. HALLETT,
U. S. Att'y.

And thereupon the said defendant filed the following joinder, to wit:—

UNITED STATES OF AMERICA,
Massachusetts, ss:

CIRCUIT COURT OF THE UNITED STATES,
within and for the District of Massachusetts:

UNITED STATES
vs.
LINDSEY NICKERSON, JR. } October term, 1854.

And the said Lindsey Nickerson, Junior, saith, that his said plea of former acquittal by him above pleaded, and the matters therein contained in manner and form as the same are above pleaded and set forth, are sufficient in law to bar and preclude the said United States from prosecuting the said indictment against him, the said Lindsey Nickerson, Junior, and the said Lindsey Nickerson, Junior, is ready to verify and prove the same as the said Court here shall direct and award: wherefore, inasmuch as the said United States have not answered the said plea, nor hitherto in any manner denied the same, the said Lindsey Nickerson, Junior, prays judgment, and that by the Court here he may be dismissed and discharged from the said premises in the said indictment specified.

LINDSEY NICKERSON, JR.

And now, the opinions of the judges being opposed as to the question whether the defendant's special plea aforesaid, be good in bar to this indictment: The said judges, upon the request of the said

attorney for the United States, made on the same day and at the same term of this Court, do order that the said point of disagreement be stated, and certified under the seal of this Court, to the Supreme Court of the United States at their next session, to be holden at Washington, on the first Monday of December next.

A true copy of record.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court at Boston, in said District, this first day of December, in the year of our Lord one thousand eight hundred and fifty-four, and of the Independence of the United States of America the seventy-ninth.

[SEAL.] H. W. FULLER,
Clerk.

Filed 27th Dec. 1854.